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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ARDEN LEE COLOMBERO,

Defendant and Appellant.

F063506

(Fresno Sup. Ct. No. F10901383)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Gary R. Orozco, Judge.

Ron Boyer, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Kathleen A. McKenna and Amanda D. Cary, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Kane, J. and Poochigian, J.

STATEMENT OF THE CASE

On May 20, 2011, a Fresno County jury found appellant Arden Lee Colombero guilty of two counts of first degree residential burglary (Pen. Code,¹ §§ 459, 460, subd. (a)) (counts 1 and 9) and four counts of receiving stolen property (§ 496, subd. (a)) (counts 7, 8, 10, and 11) and further found that appellant had served four prior prison terms (§ 667.5, subd. (b)).

On August 9, 2011, the court sentenced appellant to state prison for a total term of 11 years. The court imposed the term of six years on one burglary count (count 1), a consecutive term of 16 months on the second burglary count (count 9), a consecutive term of eight months on one count of receiving stolen property (count 7), and one year for each of three prior prison terms. The court dismissed the fourth prior prison term allegation and imposed concurrent three-year terms on the remaining counts of receiving stolen property (counts 8, 10, 11).

On October 6, 2011, appellant filed a timely notice of appeal.

STATEMENT OF FACTS

On February 6, 2010, Christopher and Mary Burback and their two daughters were asleep in their Fresno home. At 4:00 a.m., one of the Burback daughters sensed someone standing next to her bed and eventually saw the silhouette of a person walking out of her bedroom. The daughter went to her parents' bedroom and told them what had happened.

Christopher Burback chased the intruder through the backyard and into the alley of his home. As Burback entered the alley, a gun discharged and someone warned Burback to return to the house. The next day, Burback noticed that a tequila bottle was missing from the house, and a motorcycle in the garage had been moved. Police officers found a similar bottle in the alley behind the Burback home and found a credit card on the garage floor next to the motorcycle. The credit card did not belong to Burback. Subsequent

¹ All further statutory references are to the Penal Code unless otherwise stated.

analysis revealed that DNA on the tequila bottle matched a DNA sample taken from appellant.

The credit card on the floor of the Burback's garage was in the name of Kate Kennedy. She was unaware of the loss of her card until Fresno police contacted her. Kennedy contacted the credit card company and determined that a number of charges had made on the card, including one at a minimart/gas station at West and McKinley Avenues. Based on the charge information, an employee of the minimart was able to pinpoint the specific transaction. A video recording made by the security camera at the minimart showed that the transaction had been conducted by someone driving a 1965 or 1966 Oldsmobile Delta 88 or 98 model automobile. A police detective issued a bulletin for fellow officers to be on the lookout for such a vehicle.

On February 21, 2010, the police received a complaint from appellant's brother-in-law. Officers went to appellant's residence in the early morning hours. The house was located about one-half mile from the Burback residence. The officers saw a 1965 Oldsmobile 98 sedan in the garage. The car matched the description of the vehicle in the detective's bulletin. The officers knocked on the front door of the home, appellant answered, and the officers advised him that they were conducting a parole compliance check.

Officers searched the Oldsmobile in the garage and found an iPod Touch device on the dashboard. Appellant told the officers the device was his, but they determined the iPod Touch was registered to Elizabeth Brewer. The officers also found an envelope containing two checks bearing the name of Kate Kennedy and an employee identification card for a Marina Santos. The officers also searched appellant's home and found a green iPod that belonged to Deborah Riffle.

Marina Santos, a high school English teacher, testified that her house was burglarized on February 12, 2010. She said her wallet and credit cards went missing in the burglary. Santos and her sister testified that an unfamiliar can of soda was found in

the house. In addition, the laptop computer of Santos's daughter had been moved. Cheryl Blackburn, an identification technician for the Fresno Police Department, compared appellant's fingerprints with prints found on the soda can and laptop. She said appellant's prints matched those on the two objects.

DISCUSSION

THE TRIAL COURT SHOULD HAVE STAYED THE TERM IMPOSED ON COUNT 11.

Appellant contends and the People concede the trial court erred by imposing a concurrent sentence on count 11 (receiving stolen property belonging to Marina Santos) rather than staying the term imposed on that count under section 654.

Respondent acknowledges: "Here, appellant's conviction on count 11 for receipt of stolen property was based on his theft of the identification card from Marina's house on February 12, 2010. Similarly, his burglary conviction [count 9] was based on his entry into Marina's house on February 12, 2010, with the intent to commit the same theft. Consequently, the concurrent sentence imposed for the receiving stolen property conviction on count 11 must be stayed under section 654. (*People v. Allen* [(1999)] 21 Cal.4th [846, 866-867] [conviction of both burglary and receiving stolen property is appropriate subject to the punishment provisions of section 654])

DISPOSITION

The judgment is modified to reflect a stay of sentence on count 11 under section 654. (§ 1260; *People v. Alford* (2010) 180 Cal.App.4th 1463, 1473-1474.) The superior court is directed to amend the abstract of judgment accordingly and to transmit certified copies of the amended abstract to all appropriate parties and entities.